Testimony of

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of the

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Thank you for the opportunity to appear before you today to discuss the issues of financing port infrastructure. By way of background, the Waterfront Coalition is a group of concerned interests representing primarily importers and exporters, including retailers, manufacturers, and farmers. We are committed to supporting the development of the efficient, technologically advanced, and secure ports to support the movement of intermodal cargo. I serve as Executive Director of the organization.

The Waterfront Coalition recognizes that port infrastructure, both security related and related to landside transportation connectors is a critical issue in building more efficient and modern ports. We nevertheless wish to take this opportunity to express our specific opposition to proposals, such as that recently offered by Representative Dana Rorhabacher, that would seek to impose fees or taxes on shipping containers either directly or indirectly to fund port infrastructure. We would like to limit our comments today specifically to these proposals.

It is imperative to clarify one misapprehension about container taxes and fees. There seems to be some view that these fees would be paid by foreign entities who somehow derive benefit from our intermodal transportation infrastructure without paying for it. Nothing could be further from the truth.

Container fees might be levied originally against foreign flag steamship lines. But, it is more likely that these fees will apply to American companies that operate marine terminals. Those fees would be passed along to carriers and then ultimately to importers and exporters whose freight moves inside the shipping containers in question. These taxpayers--importers and exporters--already pay gasoline taxes and corporate income taxes. The importers among them make additional contributions to the general fund in the form of import tariffs and merchandise processing fees. These trade-related taxes are substantial. Import tariffs represent $21 billion in revenue each year, and customs merchandise processing fees generate an additional $1 billion in annual revenue.

Unfortunately these trade-related taxes are not earmarked for infrastructure improvement. They go into the general fund and are used for whatever priority Congress deems most important in a given year. Even the merchandise processing fee is not specifically earmarked for the Bureau of Customs and Border Protection. But just because these funds are not allocated to transportation, does not mean Congress should impose new fees on the self same businesses who have already been taxed. That would be unfair.

Of equal importance, the proposals to impose port fees seem to misunderstand the nature of ports, and the fees they can impose on their customers in order to support investments in infrastructure, including infrastructure related to security improvements.

Generally speaking, ports come in two types: landlord ports and owner-operated ports. A landlord port regularly makes infrastructure improvements *within a port's boundaries.* These improvements could include security improvements like fences, but often also include such infrastructure as roads, rail facilities or ship berths. The port then rents the improved land to terminal operators for a fee. Landlord ports already have the ability to make special assessments and impose fees for land improvements related to security or whatever other priority may be important.

In the case of an owner-operated port, the terminal operator is the port operator. Such ports make improvements for themselves in order to stay competitive. Either way, however, the cost of these improvements is ultimately passed on in the form of higher transportation costs to steamship lines, and ultimately to the importers and exporters who use the port. This is precisely as it should be, because importers and exporters should pay the price for safer more secure ports. Indeed, when it comes to security investments and infrastructure on the land *within a port*, federal funding should not be an issue at all.

Equally important, by relying on the supply chain to defray the costs of port improvements, we can be certain that the real cost of port infrastructure has been shared among supply chain partners. When the government (state, local, federal) arbitrarily imposes a fee, however, we have no certainty that the real costs are being passed on. In fact, we have every certainty that the fee will remain in place in perpetuity, long after the current crisis has passed, and that the revenues from this fee will be used for all sorts of things that may or may not inure to the benefit of the intermodal supply chain.

For these reasons, the coalition specifically opposes proposals like the one offered recently by Representative Rorhabacher. First, federal permission to impose fees is not necessary in the case of infrastructure improvements *within* a port's boundaries. Second, the government should not make ports the tax collector for projects that are *beyond* their boundaries.

Coalition members fully recognize that we have a crisis on our hands with respect to intermodal connectors and aging infrastructure near and around our ports. The Coalition strongly supports greater funding for freight movement within the context of the highway bill reauthorization. But that is a separate issue, and the notion of imposing arbitrary fees either directly as a government or through port-imposed fees is simply misguided and unfair to taxpayers whose tax contributions are being used for other priorities such as mass transit. As noted, importers and exporters make a substantial contribution to general funds. The answer to improving port infrastructure and intermodal road and rail connectors is not to impose new taxes on the same old taxpayers, but to reevaluate our spending priorities.

Some of you may ask the question whether The Waterfront Coalition is advocating that import tariffs be specifically earmarked for infrastructure improvements. While this might seem a sensible approach, the Waterfront Coalition does not support such a specific earmark. Tariffs are in place for trade protection purposes, not as a revenue source. Earmarking tariffs for port infrastructure could have the result of making certain import tariffs very difficult to remove during trade negotiations.

Equally important, Article 8 of the General Agreement on Tariffs and Trade, administered by the World Trade Organization, strictly forbids fees placed on imports for the express purpose of raising revenues. Such fees must be tied to the cost of processing -- such as the Merchandise Processing Fee--or they are likely to subject the United States to a challenge under the WTO dispute settlement process. Similarly, container taxes or fees levied on export containers would probably run afoul of the Commerce Clause of the U.S. Constitution. Similar types of user-fee proposals on exports have been struck down by the Supreme Court on numerous occasions. Imposing fees exclusively on imports would thus make our problems with the WTO legality of these fees even more problematic.

Let us not forget that, ultimately, American consumers pay these taxes in the form of higher prices. The events of September 11 have had their impacts on the supply chain and on consumer prices. That is to be expected, and I believe consumers would agree. But as prudent representatives of the American consumer and indeed the American economy, the last thing we need are new taxes and fees that further drive up costs and which also affect workers in our export industries. We suggest that instead, Congress re-visit the fees and taxes already in place and re-prioritize the spending accordingly.

Again, I thank you for this opportunity to testify today. I'd be happy to take any questions you might have.